



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201447054

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

AUG 28 2014

U.I.L. 408.03-00

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XXXXXXXXXXXXXXXXXXXX

T:EP:RA:T3

Legend:

Taxpayer A = XXXXXXXXXXXXXXXX

Individual B = XXXXXXXXXXXXXXXX

IRA X = XXXXXXXXXXXXXXXX

Amount D = XXXXXXXXXXXXXXXX

Credit Union C = XXXXXXXXXXXXXXXX

Date 1 = XXXXXXXXXXXXXXXX

Dear XXXXXXXXXXXX:

This is in response to your letter dated April 14, 2014, as supplemented by correspondence dated July 3, 2014, submitted on your behalf by your durable power of attorney, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the Code).

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A's power of attorney represents that on Date 1, Individual B, Taxpayer A's sister and caregiver, unintentionally requested and erroneously received on behalf of Taxpayer A a distribution from IRA X totaling Amount D. Taxpayer A's power of attorney asserts that Individual B's failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) on behalf of Taxpayer A was due to the mental state of Individual B at the time of the distribution.

Taxpayer A has been severely and permanently disabled for many years and was being cared for by her parents who ensured that there would be funds available in various Certificates of Deposit (CDs) with Credit Union C for Taxpayer A's care. One of the CDs was in IRA X. After the passing of Taxpayer A's parents, several years ago, Individual B, who has a power of attorney to act on behalf of Taxpayer A, became Taxpayer A's primary caregiver.

In addition to her caregiving responsibilities, Individual B is also being treated for medical problems.

Taxpayer A had an accident and broke both of her legs which resulted in even more caregiving responsibility for Individual B. All of these events left Individual B overwhelmed, rushing from one task to another, including doctor's visits for herself and Taxpayer A.

When the funds were running low because of Taxpayer A's additional medical bills, Individual B decided to cash in one of Taxpayer A's CDs at Credit Union C. Accordingly, on Date 1, Individual B, acting as an agent for Taxpayer A, went to Credit Union C to cash in one of Taxpayer A's non IRA CDs. The representative of Credit Union C completed an IRA withdrawal form and gave Individual B the form to sign. Because Individual B was overwhelmed by issues relating to Taxpayer A's care and her own medical problems, she did not realize that the withdrawal was from the CD in IRA X, whereas she intended to cash in a non-tax-deferred CD.

Taxpayer A's power of attorney did not become aware of Individual B's error until Taxpayer A's 2013 taxes were being prepared.

Based on the above facts and representations, Taxpayer A's power of attorney requests that the Internal Revenue Service (the Service) waive the 60-day rollover requirement with respect to the distribution of Amount D from IRA X.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if-

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual received the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not included in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity and good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occur after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R. B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A's power of attorney is consistent with her assertion that Individual B's failure to accomplish a timely rollover on behalf of Taxpayer A was caused by her mental state at the time of distribution which prevented her from realizing that she had taken a distribution from IRA X.

Therefore, pursuant to Code section 408(d)(3)(I), the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount D from IRA X. Taxpayer A's power of attorney is granted a period of 60 days from the issuance of this ruling letter to contribute Amount D into a Rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, the contribution of Amount D will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This letter is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter is being sent to your power of attorney.

If you have any questions regarding this letter, please contact xxxxxxxxxxxxxxxx at xxxxxxxxxxxxxxxx. All correspondence should be addressed to SE:T:EP:RA:T:3.

Sincerely yours,



Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling
Notice of Intention to Disclose